

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,

Governor.

The Marine Environment (Protection) Ordinance 1995

(No: 9 of 1995)

An Ordinance

To prohibit, except under the authority of a licence granted by the Governor, the deposit of deleterious matter in controlled waters of the Falkland Islands and to enable the provisions of the London Dumping Convention 1972 to be implemented in the Falkland Islands and in Falkland Islands waters.

(assented to: 23rd June 1995)

(commencement: in accordance with section 1)

(published: 28th June 1995)

ENACTED by the Legislature of the Falkland Islands as follows -

PART I

INTRODUCTORY

1. This Ordinance may be cited as the Marine Environment (Protection) Ordinance 1995 and shall come into force on such date as the Governor, by notice published in the Gazette, may appoint.

*Short title, and
commencement*

2.(1) In this Ordinance, and unless the context otherwise requires -

Interpretation

"the 1985 Act" means the Food and Environment Protection Act 1985;

1985 c.48 s.24

"the Convention" means the Convention on the prevention of Maritime Pollution by the Dumping of Wastes and Other Matter concluded at London in December 1972;

"Convention State" means a state which is a party to the Convention;

"designated area of the continental shelf" has the same meaning as it has under section 2(1) of the Offshore Minerals Ordinance 1994;

"Falkland Islands aircraft" means an aircraft registered in the Falkland Islands;

"Falkland Islands controlled waters" means any part of the sea within the limits of

any designated area of the continental shelf;

"Falkland Islands hovercraft" means a hovercraft registered in the Falkland Islands;

"Falkland Islands marine structure" means a marine structure within Falkland Islands waters or Falkland Islands controlled waters;

"Falkland Islands vessel" means a vessel registered in the Falkland Islands, or a vessel exempted from such registration under the Merchant Shipping Act 1894;

"Falkland Islands waters" means any part of the sea within the seaward limits of the Falkland Islands territorial sea;

"incineration" means any combustion of substances and materials for the purpose of their thermal destruction;

"licence" means a licence granted by the licensing authority under Part II of this Ordinance;

"the licensing authority" means the person who, under the provisions of section 6(1), is for the time being the licensing authority;

"marine structure" means a platform or other man-made structure at sea, other than a pipe- line;

"master" in relation to any vessel, includes the person for the time being in charge of the vessel;

"scuttling" in relation to a vessel, means the deliberate sinking of that vessel by one or more members of the crew of that vessel or by or on behalf of any person having an interest in the ownership of that vessel, in a mortgage or charge of that vessel, in a demise of that vessel or in the proceeds of a policy of insurance effected in relation to that vessel;

"sea" includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river;

"vessel" has the meaning assigned to it by section 742 of the Merchant Shipping Act 1894;

(2) Any reference in this Ordinance to the Convention is a reference to it as it has effect from time to time.

PART II
DEPOSITS AT SEA

Licensing

3.(1) Subject to the following provisions of this Part, a licence under this Part is needed -

*Requirements of
licences for the
deposit of
substances and
articles in the sea
(1985 c.48 s.5)*

(a) for the deposit of substances or articles within Falkland Islands waters or Falkland Islands controlled waters, either in the sea or under the sea-bed -

- (i) from a vehicle, vessel, aircraft, hovercraft or marine structure;
- (ii) from a container floating in the sea;
- (iii) from a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;

(b) for the deposit of substances or articles anywhere in the sea or under the sea-bed -

- (i) from a Falkland Islands vessel, Falkland Islands aircraft or Falkland Islands marine structure; or
- (ii) from a container floating in the sea, if the deposit is controlled from a Falkland Islands vessel, Falkland Islands aircraft, Falkland Islands hovercraft or Falkland Islands marine structure,

(c) for the scuttling of vessels -

- (i) in Falkland Islands waters or Falkland Islands controlled waters;
- (ii) anywhere at sea if the scuttling is controlled from a Falkland Islands vessel, Falkland Islands aircraft, Falkland Islands hovercraft or Falkland Islands marine structure;

(d) for the loading of a vessel, aircraft, hovercraft, marine structure or floating container in the Falkland Islands or Falkland Islands waters with substances or articles for deposit anywhere in the sea or under the sea-bed;

(e) for the loading of a vehicle in the Falkland Islands with substances or articles for deposit from that vehicle as mentioned in paragraph (a) or (b); and

(f) for the towing or propelling from the Falkland Islands or Falkland Islands waters of a vessel for scuttling anywhere at sea.

4. Subject to the following provisions of this Part, a licence is needed -

*Requirements of
licences for
incineration at sea
etc.*

(a) for the incineration of substances or articles on a vessel or marine structure -

1985 c.48 s.5

- (i) in Falkland Islands waters or Falkland Islands controlled waters;
and
- (ii) anywhere at sea if the incineration takes place on a Falkland Islands vessel or Falkland Islands marine structure,

(b) for the loading of a vessel or marine structure in the Falkland Islands or Falkland Islands waters with substances or articles for incineration at sea.

5.(1) The Governor may by order specify operations -

Exemptions.

(a) which are not to need a licence;

(1985 c.48 s.5)

(b) which are not to need a licence if they satisfy the conditions specified in the order.

(2) The conditions that an order under this section may specify include conditions enabling the licensing authority to require a person to obtain the authority's approval before he does anything for which a licence would be needed but for the order.

6.(1) The Governor may appoint a public officer to be the licensing authority for the purposes of this Part and may from time to time revoke any such appointment and appoint another public officer to be the licensing authority in his place. If no appointment of a public officer is for the time being in force under this subsection, the Governor himself shall be the licensing authority.

Licences

(1985 c.48 s.5)

(2) In determining whether to issue a licence the licensing authority -

(a) shall have regard to the need -

(i) to protect to the marine environment, the living resources which it supports and human health;

(ii) to prevent interference with legitimate uses of the sea; and

(b) may have regard to such other matters as the authority considers relevant.

(3) Without prejudice to the generality of subsection (1) above, where it appears to the licensing authority that an application for a licence has applied for the licence with a view to the disposal of articles or substances to which it would relate, the authority, in determining whether to issue a licence, shall have regard to the practical availability of any alternative methods of dealing with them.

(4) The licensing authority -

(a) shall include such provisions in a licence as appear to the authority to be necessary or expedient -

(i) to protect the marine environment, the living resources which it supports and human health; and

(ii) to prevent interference with legitimate uses of the sea; and

(b) may include in a licence such other provisions as the authority considers appropriate.

(5) Without prejudice to the generality of subsection (3) above, the licensing authority -

(a) may include in a licence provisions requiring -

(i) that no operations authorised by the licence shall be carried out until the licensing authority has given such further consent or approval of the operator. as the licence may specify; and

(ii) that automatic equipment shall be used for recording such information relating to the operation of any deposit, scuttling or incineration mentioned in the licence as the licensing authority may specify; and

(b) may include in a licence which only authorises operations such as are mentioned in section 3(d) or section 4(b) provisions requiring that any operation of deposit, scuttling or incineration which is mentioned in it shall take place at a specified site.

(6) The licensing authority may require an applicant for a licence to supply such information and permit such examinations and tests as in the opinion of the licensing authority may be necessary or expedient to enable the authority to decide whether a licence should be issued to the applicant and the provisions which any licence that is issued to him ought to contain.

(7) Where automatic recording equipment is used in accordance with a provision included in a licence by virtue of subsection (5)(a) of this section, any record produced by means of the equipment shall, in any proceedings under this Part, be evidence of the matters appearing from the record.

(8) The licensing authority may require an applicant for a licence, on making his application, to pay a reasonable fee towards the expense -

(a) of carrying out any examinations and tests which in the opinion of the authority are necessary or expedient to enable the authority to decide -

(i) whether to issue a licence to the applicant; and

(ii) the provisions which any licence issued to him ought to include;

(b) of checking the manner in which operations for which a licence is needed have been or are being conducted; and

(c) of monitoring the effect of such operation.

(10) Fees under this section shall be determined by the Governor who shall, in determining such fees, have regard to the amount and scope of the fees for the time being charged under section 8 of the 1985 Act.

(11) The licensing authority may vary or revoke a licence which the authority has issued if it appears to the authority that the licence ought to be varied or revoked -

(a) because of a change in circumstances relating to the marine environment, the living resources it supports or human health; or -

(b) because of increased scientific knowledge relating to any of those matters; or

(c) for any other reason that appears to the authority to be relevant.

(12) Schedule 1 to this Ordinance shall have effect in relation to the right to make representations and other matters relating to licences.

Offences relating to the licensing system

7.(1) Subject to subsections (3) to (7), a person commits an offence who-

*Offences related
to the licencing
system.*

(1985 c.48 s.5)

(a) except in pursuance of a licence and in accordance with its provisions does anything for which a licence is needed; or

(b) causes or permits any other person to do any such thing except in pursuance of a licence and in accordance with its provisions.

(2) A person commits an offence who, for the purpose of procuring the issue of a licence or in purporting to carry out any duty imposed on him by the provisions of a licence -

(a) makes a statement which he knows to be false in a material particular;

(b) recklessly makes a statement which is false in a material particular; or

(c) intentionally fails to disclose any material particular.

(3) Subject to subsection (4), it shall be a defence for a person charged with an offence under subsection (1) in relation to any operation to prove -

(a) that the operation was carried out for the purposes of securing the safety of a vessel, aircraft, hovercraft or marine structure or of saving life; and

(b) that he took steps within a reasonable time to inform the licensing authority -

(i) of the operation;

(ii) of the locality and circumstances in which it took place; and

(iii) of any substances or articles concerned.

(4) A person does not have the defence provided by subsection (3) if the court is satisfied -

(a) that the operation -

(i) was not necessary for any purpose mentioned in paragraph (a) of the said subsection;

(ii) was not a reasonable step in the circumstances; or

(b) that it was necessary for one of those purposes but the necessity was due to the fault of the defendant.

(5) It shall be a defence for a person charged with an offence under subsection (1) in relation to any operation -

(a) which falls within section 3(b) or section 4(1)(a)(ii) above; and

(b) which was carried outside Falkland Islands controlled waters and not within Falkland Islands waters

to prove that subsections (6) and (7) of this section are satisfied in respect of that operation.

(6) This subsection is satisfied -

(a) in respect of an operation falling within section 3(b) if the vessel, aircraft, hovercraft, marine structure or container (as the case may be) was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles deposited;

(b) in respect of an operation falling within section 3(c)(ii), if the vessels scuttled was towed or propelled from a Convention State to the place where the scuttling was carried out; or

(c) in respect of an operation falling within section 4(a) (ii), if the vessel or marine structure on which the incineration took place was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles incinerated.

(7) This subsection is satisfied in respect of an operation if the operation took place in pursuance of a licence issued by the responsible authority in the Convention State concerned and in accordance with the provisions of that licence.

8.(1) The Governor may carry out any operation which appears to him may be necessary or expedient for the purpose of protecting the marine environment, the living resources which it supports and human health, or of preventing interference with the legitimate use of the sea, in any case where anything for which a licence is needed appears to have been done otherwise than in pursuance of a licence and in accordance with its provisions.

*Power to take
remedial action*

(1985 c.48 s.5)

(2) If the Governor carries out an operation under subsection (1) the Crown may recover any expenses reasonably incurred by the Governor in carrying it out from any person who has been convicted of an offence in consequence of the act or omission which made it appear to the Minister to be necessary or expedient to carry out the operation.

Enforcement

9.(1) The Governor may authorise any person, subject to such limitations as may be specified in the instrument authorising him, to enforce this Part, and the following provisions of this Ordinance shall be construed, in reference to a person so authorised, as subject to any such limitation.

Power of officers.

(1985 c.48 s.5)

(2) Subject to the following provisions of this Ordinance, a person so authorised may enter -

(a) land and vehicle in the Falkland Islands;

(b) foreign vessels, foreign aircraft, foreign hovercraft and foreign marine structures in the Falkland Islands or within Falkland Islands waters or Falkland Islands controlled waters;

(c) Falkland Islands vessels, Falkland Islands aircraft, Falkland Islands hovercraft and Falkland Islands marine structures wherever they may be,

if he has reasonable grounds for believing that any substances or articles intended to be deposited in the sea or under the sea-bed or incinerated on a vessel or marine structure at sea are or have been present there.

(3) A person so authorised may board -

(a) any vessel within Falkland Islands waters or Falkland Islands controlled

waters; and

(b) any Falkland Islands vessel wherever it may be,

if it appears to him that it is intended to be scuttled.

(4) A person so authorised shall not enter premises used only as a dwelling for the purpose of enforcing this Ordinance.

(5) schedule 2 shall have effect with respect to persons authorised to enforce this Ordinance.

10.(1) The Governor may by Order-

*Enforcement of
convention*

(a) declare that any procedure which as been developed for the effective application of the Convention and is specified in the order is a procedure declared to be an agreed procedure under section 12(1)(a) of the 1985 Act; and

(1985 c.48 s.5)

(b) specify that any of the powers conferred by this Ordinance for the purpose of enforcing this Part as a power that may be exercised, by such persons and in such circumstances and subject to such conditions or modifications as may be specified, for the purposes of enforcing that procedure.

(2) An Order under subsection (1) may apply to the Falkland Islands. Falkland Islands waters and Falkland Islands controlled waters any statutory instrument made under section 12(1) of the 1985 Act and with such modifications and adaptations as the Governor may consider necessary or expedient.

(3) A person who exercises any powers by virtue of an Order under this section shall have the same right and liabilities in relation to their exercise that a person authorised under section 9 of this Ordinance would have in relation to the exercise of any powers for the purpose of enforcing of this Part.

Miscellaneous

11. (1) At the request of any person the Governor may conduct tests for the purpose of ascertaining the probable effect on the marine environment and the living resources which it supports of using for the purpose of treating oil on the surface of the sea any substance produced or that purpose.

*Power of
Governor to test
and charge for
testing.*

(1985 c.48 s.5)

(2) If the Governor conducts tests under this section, he may recover any expenses reasonably incurred by him in conducting them from any person at whose request they were conducted.

12.(1) A person convicted of an offence under section 7(1) is liable to a fine or to imprisonment 4 for a term not exceeding two years. I

*Offences and
Penalties etc.*

(1985 c.48 s.5)

(2) A person convicted of an offence under section 7(2) is liable to a fine. t

(3) A person convicted of an offence under Schedule 2 to this Ordinance is liable to a fine not exceeding the maximum of level 5 on the standard scale.

(4) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or the connivance of, or attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate has committed

that offence and is liable to be proceeded against then punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

13.(1) In any proceedings for an offence under this Ordinance it is a defence for the person (charged to prove that he took all reasonable precautions and exercised all due diligence to avoid It the commission of the offence.

*General defence
to due diligence*

(1985 c.48 s.5)

(2) Without prejudice to the generality of subsection (1), a person is to be taken to have established the defence provided by that subsection if he proves -

(a) that he acted under instructions given to him by his employer; or

(b) that he acted in reliance on information supplied by another person without any reason to suppose that the information was false or misleading,

and in either case that he took all such steps as were reasonably open to him to ensure that no offence would be committed.

(3) If in any case the defence provided by subsection (1) involves an allegation that the commission of the offence was due to an act or omission by another person, other than the giving of instructions to the person charged with the offence by his employer, or to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on that defence unless within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

SCHEDULE 1

(section 6)

LICENCES. RIGHT TO MAKE REPRESENTATIONS ETC

1. If within twenty-eight days of the issue of a licence the person to whom it is issued requests the licensing authority to give him notice in writing of the reasons for the inclusion of any provision in it, the authority shall comply with his request within twenty-eight days of receiving it.
2. On issuing a licence to a person the licensing authority shall notify him of the effect of paragraph 1.
3. If the licensing authority refuses an application for a licence, the licensing authority shall give the applicant notice in writing of the reasons for the refusal.
4. If the licensing authority varies or revokes a licence without the holder's consent, the authority shall give the holder notice in writing of the reasons for variation or revocation.
5. If within twenty-eight days of receipt of a notice under this Schedule giving the licensing authority's reasons the person to whom it is given makes written representations to the authority concerning the matter to which the notice related, the authority shall consider those written representations and shall reconsider the matter in the light of those representations.
6. A notice under this Schedule stating the licensing authority's reasons shall state the effect of paragraph 5.
7. The licensing authority shall notify the person who made the representations as to the result of the authority's reconsideration and the reasons for it.

SCHEDULE 2

(section 9)

Introductory

1. In this Schedule "officer" means a person authorised to enforce Part II of this Ordinance.

Assistants for officers etc

- 2.(1) An officer may take with him, to assist him in performing his functions -

- (a) any other person; and
- (b) any equipment or materials.

- (2) A person whom an officer takes with him to assist him may perform any of the officer's functions, but only under the officer's supervision.

Powers in relation to vessels, aircraft etc

- 3.(1) In order to perform his functions under Part n of this Ordinance an officer may require any person -

- (a) to give details of any substances or articles on board, a vessel, aircraft, hovercraft or marine structure; and
- (b) to give information concerning any substances or articles lost from a vessel, aircraft, hovercraft or marine structure.

(2) In order to perform any such functions an officer -

- (a) may require any vessel, aircraft, hovercraft or marine structure to stop; and
- (b) may require the attendance -
 - (i) of the master, captain or commander of a vessel, aircraft or hovercraft;
 - (ii) of the person in charge of a marine structure; and
 - (iii) of any other person who is on board a vessel, aircraft, hovercraft or marine structure,

and may require any person on board to assist him in the performance of his functions.

(3) In order to perform functions under Part n of this Ordinance an officer -

- (a) may require -
 - (i) the master, captain or commander of a vessel, aircraft or hovercraft; and
 - (ii) the person in charge of a marine structure,

to take it and its crew to the port which appears to the officer to be the nearest convenient port; or

- (b) may take it there himself.

(4) In order to perform any such functions an officer may detain a vessel, aircraft, hovercraft or marine structure.

(5) If an officer detains a vessel, aircraft, hovercraft or marine structure, he shall serve on the master, captain, commander or person in charge a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by the officer.

Containers etc.

4. Without prejudice to his powers under any other provision of this Ordinance, in order to perform his functions an officer -

- (a) may open any container;
- (b) may carry out searches. inspections. measurements and tests;
- (c) may take samples;
- (d) may require the production of documents. books and records; and
- (e) may photograph or copy anything the production of which he has power

to require under paragraph (d).

Evidence of officers authority

5.(1) An officer shall be furnished with a certificate of his authorisation, and when he proposes to perform any functions under this Ordinance, it shall be his duty if so requested, to produce that certificate.

(2) It shall also be his duty, if so requested, to state-

- (a) his name;
- (b) the functions that he proposes to perform; and
- (c) his grounds for proposing to perform it.

Time of performance of functions

6. An officer must perform his functions under this Ordinance at a reasonable hour unless it appears to the officer that there are grounds for suspecting that the purposes of their performance may be frustrated if he seeks to perform them at a reasonable hour.

Entry into dwellings

7.(1) An officer may only enter a dwelling for the purposes of performing his functions under this Ordinance if a justice of the peace has issued a warrant authorising him to enter and search that dwelling.

(2) A justice of the peace may only issue such a warrant if on application by the officer he is satisfied -

- (a) that the officer has reasonable grounds for believing that there is present in the dwelling anything to which those functions relates; and
- (b) that -
 - (i) it is not practicable to communicate with any person entitled to grant entry to the dwelling; or
 - (ii) a person entitled to grant entry to the dwelling has unreasonably refused an officer entry; or
 - (iii) entry to the dwelling is unlikely to be granted unless a warrant is produced; or
 - (iv) the purpose of entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can secure immediate entry to it.

(3) In this paragraph "justice of the peace" includes the Senior Magistrate.

Power of officer to use reasonable force

8. An officer may use reasonable force, if necessary, in the performance of his functions.

Protection of officers

9. An officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Ordinance if the court

is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

10. A person commits an offence who-

- (a) intentionally obstructs an officer in the performance of any of his functions under this Ordinance;
- (b) fails without reasonable excuse to comply with a requirement made or direction given by an officer in the performance of his functions under this Ordinance; or
- (c) in purporting to give information required by an officer for the performance of any of his functions under this Ordinance -
 - (i) makes a statement which he knows to be false in a material particular;
 - (ii) recklessly makes a statement which is false in a material particular; or
 - (iii) intentionally fails to disclose any material particular.

Passed by the Legislature of the Falkland Islands this 1st day of June 1995.

C. de CEBALLOS,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and is found by me to be a true and correctly printed copy of the said Bill.

C. de CEBALLOS,
Clerk of Councils.